

**REMARKS**

***Status of Claims***

Claims 1-16 are currently pending in the application.

Of the pending claims, claims 15 and 16 are newly added.

Accordingly, Applicants hereby request further examination and reconsideration of the presently claimed application in light of the amendments and the following remarks.

***Claim Rejections – 35 USC § 112, second paragraph***

Claims 1-14 have been rejected under 35 USC § 112, second paragraph, as being indefinite for failing in particularly point out and distinctly claim the subject matter which applicants regard as the invention. More specifically, the examiner has indicated concern with respect to the optimization of relocation forces on the cover due to the use of only a single strap on each side providing no more than one point of contact for securing the cover in place, believing that “Applicants’ assertion that having only one support as compared to having multiple support location would enhance the cover’s ability to withstand peak wind conditions contradicts physic laws.” *Office Action of 2/14/08, p.2.* To satisfy the examiner’s concerns, Applicants will demonstrate the superior real-world results of the presently claimed cover by presenting the attached Declaration evidence.

As the examiner has noted, Applicants’ invention differs primarily from and is superior to the cited *Porter* reference (which has multiple support straps per side) by limiting the number of support straps to one per side. *See also the attached Declaration paragraphs 9-10.* Applicants understand the examiner’s difficulty in believing that a single strap could provide a more secure

cover than one using multiple support straps. In fact, Applicants were surprised themselves at the time of invention. Nevertheless, repeated real-world comparison of Applicants' cover in direct comparison to the cited *Porter* cover demonstrates that Applicants' claimed cover (with only one strap per side) is in fact superior.

While Applicants have previously presented the declaration of one of the inventors, attempting to explain his observation of this superiority, Applicants now supplement this testimony with the attached Declaration of Kyle Taubert, General Manager of Oasis Gin & Warehouse. Mr. Taubert is an expert in the field, and has extensively used both Applicants' presently claimed cover and the *Porter* cover. *See the attached Declaration paragraphs 1-7.* In fact, he has used approximately 1,000 of the *Porter* covers over a 3+ year period, and has used approximately 1,700 of Applicants' covers over an overlapping 4 year period under similar conditions in the field. *See attached Declaration paragraphs 12 and 15.* Thus, he is eminently qualified to compare the performance of these two products.

As the attached Declaration indicates, Mr. Taubert's extensive experience using both the Applicants' presently claimed cover and the cited *Porter* cover has revealed that Applicants' covers "are surprisingly superior at staying in place on the cotton modules, and the level of superiority is so significant that it has caused [him] to stop using the Kenny Porter/L.P. Brown Co. covers in favor of the covers from [Applicants]. By way of example, during the harvest season of 2004 and 2005 [his cotton modules] experienced several unusually high wind events in west Texas. 40 mph sustained winds were not uncommon. Approximately 40% of the [*Porter*] covers were lost and never recovered. During the 2005 harvest, frustrated, [he] tried the [Applicants'] cover offering. None of the [Applicants'] covers were lost in 2005, and none have been lost since." *See*

attached Declaration paragraphs 13-14. So in this extensive real-world side-by-side comparison of products, Applicants' covers with only a single strap per side wall proved markedly superior to the cited *Porter* cover in resisting wind forces and staying in place on cotton modules.<sup>1</sup> In fact, Applicants' cover proved so vastly superior to the *Porter* cover that Mr. Taubert's company stopped using the *Porter* covers and now exclusively uses Applicants' covers. See attached Declaration paragraphs 15-16. Mr. Taubert's informal survey of others in his industry has reinforced his own real-world comparison, finding that "their experiences with these products are similar to [his] own, described above." See attached Declaration paragraph 18.

Mr. Taubert himself was surprised by these results, since he had initially believed that the additional straps of the *Porter* cover would provide additional strength. Nevertheless, he has been "won over by the real-world results seen in the field." See attached Declaration paragraph 19. Quite simply, the evidence has convincingly demonstrated that the use of a single strap on each side by Applicants' cover provides superior strength in resisting wind forces, and the results showed that the Applicants' cover is so surprisingly superior to the *Porter* cover that Mr. Taubert's company has switched exclusively to Applicants' covers. Thus, the attached declaration provides expert evidence of real-world side-by-side comparison between Applicants' cover and the cited *Porter* cover, revealing that Applicants' single strap is indeed better.

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<sup>1</sup> And as paragraph 9 of the attached Declaration indicates, the improved performance of Applicants' cover results from the use of a single strap per side, since the *Porter* cover "is substantially similar to the [Applicants'] cover, but uses multiple support straps."

Given the convincing evidence presented in the attached Declaration of Mr. Kyle Taubert, Applicants feel that the examiner's concerns have been fully addressed. Accordingly, Applicants respectfully request that the §112 rejection of claims 1-14 be withdrawn, and that claims 1-14 be found in condition for allowance.

***Claim Rejections – 35 USC § 103(a) Obviousness***

Claim 8 has been rejected under 35 USC § 103(a) as being unpatentable over *Porter* (U.S. Patent No. 5,904,243) or in the alternative, under 35 USC § 103(a) as being unpatentable over *Porter* in view of *Frieder et al.* (U.S. Patent No. 3,011,820). Claims 1-3, 5, 6, 9-11, 13 and 14 have been rejected under 35 USC § 103(a) as being unpatentable over the *Porter* rejection, and further in view of either *Horwath* (US Published Application No. 2003/0226846) or *Gallagher* (U.S. Patent No. 4,308,905); and claims 4, 7, and 12 have been rejected under 35 USC § 103(a) as being unpatentable over the *Porter* rejection and further in view of either *Campbell* (U.S. Patent No. 2,705,461) or *Frieder et al.* Applicants respectfully disagree with these rejections.

Under 35 USC §103, the central question when considering obviousness is whether a person of ordinary skill in the art field looking at these cited references at the time of invention would obviously be led to the present invention. *See MPEP 2142.* In the present matter, however, there is nothing in any of the cited references that would lead a person of skill in the art field to eliminate supports from the cited *Porter* reference in an attempt to strengthen wind resistance. Absent hindsight, the cited prior art references simply do not lead to the presently claimed invention.

### I. The cited prior art references do not lead to a single strap

As the attached Declaration explains, the present invention's use of one strap per side rather than the multiple straps taught by the cited prior art yields surprisingly superior results. *See the attached Declaration paragraph 20.* Paragraph 19 of the Declaration specifically reveals the initial surprise experienced by an expert with more than 16 years of experience in the field, indicating that he "would have expected the additional straps of the [Porter] cover to provide added strength." It was only after seeing the real-world results of side-by-side comparisons in the field that he overcame his skepticism. *See the attached Declaration paragraph 19.* The present invention proved strikingly superior, since in the field 40% of the *Porter* covers blew off and were lost, while none of the Applicants' covers have been lost. *See the attached Declaration paragraph 14.* This has led Mr. Taubert's company to exclusively use the Applicants' cover in place of the cited *Porter* cover, resulting in commercial success of Applicants' cover. *See the attached Declaration paragraphs 16 and 21, and also the §112 arguments above (further explaining non-obviousness), hereby fully incorporated.*

Indeed, in the Office Action of February 14, 2008, **the examiner has essentially admitted that it is not obvious to reduce the number of straps in an attempt to provide a stronger hold to resist wind up-lift forces** (going so far as to state that "Applicant's assertion that having only one support as compared to having multiple support location would enhance the cover's ability to withstand peak wind condition *contradicts physic laws*"). *See Office Action 2/14/2008, page 2, paragraph 1.* In this statement, the examiner basically agrees with the expert's point in paragraph 19 of the attached Declaration: Applicants' solution (of reducing the number of straps) is counter-intuitive. Thus, a person skilled in the art field who was attempting to improve the *Porter* cover's

ability to withstand wind up-lift forces simply would not obviously be motivated by the cited prior art to eliminate support straps.<sup>2</sup>

Given the examiner's own inherent admission, along with the evidence in the attached Declaration showing that the results of real-world comparison testing were unexpected and significant (i.e. surprisingly superior), Applicants submit that the presently claimed invention is not obvious. Accordingly, Applicants respectfully request that the §103 rejection be withdrawn, and that claims 1-14 be found in condition for allowance.

## **II. A person of skill in the art would not look to the cited secondary references**

Applicants also note that there would be no reason for a person of ordinary skill in the art field to even consider the secondary prior art references cited by the examiner in the Office Action of 2/14/2008. The presently claimed invention is for a cover to protect cotton modules from rain while resisting wind up-lift forces so that the cover may stay securely in place atop the cotton module. None of the secondary cited prior art references relate to this issue.

By way of example, the *Frieder* reference deals with cargo netting. Cargo netting cannot serve as a rain cover, since its open mesh would not offer any protection from water penetration. Additionally, cargo netting would not experience the wind uplift forces that Applicants' presently claimed invention is attempting to address, since cargo netting does not have the surface area that would catch the wind. Thus, *Frieder* would not provide any insight into addressing this wind up-lift problem. Quite frankly, cargo netting is irrelevant to the issues of the presently claimed

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<sup>2</sup> Applicants also note that the purpose of the cover at issue is to remain in place when exposed to wind, and that the insignificant amount of material that might be saved in reducing the number of straps is irrelevant in the face of this fundamental purpose; no rational person of skill in the art field would eliminate support straps while believing that this would weaken the grip of the cover atop a module.

invention, so a person of skill in the art field would not look to *Frieder* when considering ways to improve the cited *Porter* prior art reference.

Similarly, the *Campbell* and *Horwath* references each deal with netting. So again, these references would not offer any rain protection, and would not experience wind up-lift forces tending to blow a cover from a module. So absent hindsight, there is no reason that a person of skill in the art field would consult these very different references.

The *Gallagher* reference is also irrelevant, since it relates to a vertical cover for a wall-mounted air conditioner window unit. Obviously, air conditioning has nothing to do with cotton modules; this reference seems to come completely out of left field. Additionally, the *Gallagher* cover is side-mounted, and does not cover the top of the A/C unit. Thus, it does not offer protection from rain (of the sort required by Applicants' cover). And being side-mounted (and also being located next to a house that serves as a windbreak), it does not experience wind up-lift forces of the sort that the present cotton module cover must resist. Absent hindsight, a person of skill in the art field simply would not look to *Gallagher* when considering ways to improve the cited *Porter* prior art reference.

Since none of the cited secondary references are relevant, a person of skill in the art field would not look to these references at all when considering ways to modify the primary *Porter* reference. There is simply no reason to combine these disparate references. Thus, Applicants respectfully request that the §103 rejection of claims 1-14 be withdrawn, and that these claims now be found in condition for allowance.

**III. The newly added claims offer additional limitations**

Applicants also note for convenience that claims 15 and 16 are newly added claims depending from claim 1. As the examiner is aware, “if an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.” *MPEP 2143.03*. Thus, newly added claims 15 and 16 should also be allowable for the reasons set forth above. Additionally, each of these newly added claims includes further limitations making them distinguishable from the cited prior art references. Accordingly, Applicants respectfully request that claims 15-16 also be found in condition for allowance.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration of the application, withdrawal of the rejections, and a finding that claims 1-16 are in condition for allowance. It is believed that each rejection raised in the *Office Action* dated February 14, 2008 has been fully addressed. Thus, Applicants respectfully request that this application move to immediate issuance with claims 1-16 as amended. If any fee is due as a result of the filing of this paper, please appropriately charge such fee to Deposit Account Number 50-1515 of Conley Rose, P.C., Dallas, Texas. If a petition for extension of time is necessary in order for this paper to be deemed timely filed, please consider this a petition therefore.

If a telephone conference would facilitate the resolution of any issue or expedite the prosecution of the application, the Examiner is invited to contact the undersigned at the telephone number given below.

Respectfully submitted,

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